

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DELTA COATINGS, LLC,	)	
	)	
Plaintiff,	)	Case No. 1:17-cv-00069 (Erie)
	)	
vs.	)	RICHARD A. LANZILLO
	)	UNITED STATES MAGISTRATE JUDGE
DONJON SHIPBUILDING AND	)	
REPAIR, LLC	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER GRANTING IN PART AND DENYING IN PART  
DEFENDANT’S MOTION TO STRIKE [ECF NO. 54]

Upon consideration of Defendant Donjon Shipbuilding and Repair, LLC’s Emergency Motion to Strike Plaintiff/Counterclaim Defendant Delta Coatings, LLC’s Unauthorized and Improper Filing [ECF No. 54], it is hereby ordered that the Motion is **GRANTED** in part and **DENIED** in part as stated herein.

Donjon previously filed a Motion for Summary Judgment challenging the evidentiary viability of Delta’s claim in this action [ECF No. 41]. Upon review of the parties’ submissions relative to the Motion for Summary Judgment, the Court previously noted that Delta’s “Statement of Material Facts in Dispute and Unresolved by Pending Motion” [ECF No. 44-2] failed to comply with LCvR 56(C)(1) in several material respects, including its failure to respond specifically to the corresponding paragraphs of Donjon’s Concise Statement of Material Facts. As a consequence, the Court entered an Order [ECF No. 46] on November 9, 2018, directing Delta to file a responsive Concise Statement of Material Facts that complies with the local rule. *Id.* After multiple extensions, Delta filed a 162-page document labeled as a “Reply Memorandum in Support of Opposition to Defendant’s Motion for Summary Judgment” [ECF No. 53]. This submission included a sur-reply brief (styled as a “Reply Memorandum in Support

of Opposition to Defendant's Motion for Summary Judgment"), a responsive Concise Statement of Material Facts, and additional affidavits and exhibits that were not included with Delta's original opposition papers. Delta's submission asserts that the Court requested that it file a sur-reply brief and supplement the record. *See* ECF No. 53, at 1. This assertion is contrary to the clear and unambiguous language of the Court's Order. The Court's Order simply directed Delta to file a responsive Concise Statement of Material Facts that complies with LCvR 56(C)(1). Delta's sur-reply brief and supplemental evidentiary materials were filed therefore without leave of Court. Donjon's Motion to Strike [ECF No. 54] requests that the Court strike Delta's Reply to Response [ECF No. 53] in its entirety. The Court will grant Donjon's Motion, but only to the extent Delta's submission deviated from the Court's prior Order.

**TO WIT**, it is hereby ordered that Defendant Donjon's Emergency Motion to Strike [ECF No. 54] is granted as follows:

the following portions of Delta's submission are hereby stricken and will not be considered in connection with Donjon's Motion for Summary Judgment:

1. Delta's Reply Memorandum in Support of Opposition to Defendant's Motion for Summary Judgment [ECF No. 53, pp.1-11 only];
2. Affidavit of Joe Marshall in Opposition to Defendant's Motion for Summary Judgment (Exhibit L to Delta's submission) [ECF 53-8];
3. Affidavit of James Thomas in Opposition to Defendant's Motion for Summary Judgment (Exhibit L to Delta's submission) [ECF 53-9];

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rule 72(C)(2) of the Local Rules of Court, the parties are allowed fourteen (14) days from the date of this

Order to file an appeal to the District Judge which includes the basis for objection to this Order.

Failure to file a timely appeal will constitute a waiver of any appellate rights.

So ordered.

/s/ Richard A. Lanzillo  
RICHARD A. LANZILLO  
United States Magistrate Judge

Dated this 28<sup>th</sup> Day of December, 2018